

**American Model & Pattern, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.**  
Case 7-CA-20135

21 March 1984

### DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND  
DENNIS

On 29 April 1983 Administrative Law Judge William F. Jacobs issued the attached decision. Thereafter, the Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> and to adopt the recommended Order as modified.<sup>3</sup>

### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and hereby orders that the Respondent, American Model & Pattern, Inc., St. Clair Shores, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as modified.

1. Substitute the following for paragraph 1(d).

"(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> We note that no one filed exceptions to the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act by granting a wage increase to employees on 17 July 1981.

Members Hunter and Dennis find it unnecessary to pass on the judge's conclusions that the Respondent violated Sec. 8(a)(1) by Albert Blankenburg's interrogation of employee Louis Nagy in mid-July 1981, and by David Gunsberg's interrogation of Paul Harrington on 9 December 1981, because finding such violations would merely be cumulative. Member Zimmerman would adopt the judge's finding that those interrogations were unlawful.

<sup>3</sup> The judge recommended that the Board issue a broad cease-and-desist order requiring the Respondent to cease and desist from violating the Act "in any other manner." However, we do not find the Respondent's conduct in this case egregious enough to warrant the issuance of such an order. Consequently, we shall substitute the narrow language, requiring the Respondent to cease and desist from violating the Act "in any like or related manner," for the provision recommended by the judge. See *Hickmott Foods*, 242 NLRB 1357 (1979).

2. Substitute the attached notice for that of the administrative law judge.

### APPENDIX

#### NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate employees concerning their union activities.

WE WILL NOT restrict employees' time in the plant prior to and after their shifts in order to interfere with their rights to engage in union activities.

WE WILL NOT grant wage increases to employees where the purpose of such action is to interfere with their Section 7 rights.

WE WILL NOT discourage membership in the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW or any other labor organization by discriminatorily laying off any of our employees.

WE WILL NOT discriminatorily assign employees to the night shift because of, or in order to interfere with, their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL offer Paul Harrington immediate and full reinstatement to his former position on the day shift or, if such position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any losses, including loss of pay, with interest, which he may have suffered because of our discrimination against him.

All our employees are free to become or remain, or refrain from becoming or remaining, members of a labor organization.

# AMERICAN MODEL & PATTERN, INC.

## DECISION

### STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge. The charge in the instant proceeding was filed on December 17, 1981,<sup>1</sup> by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, hereinafter called the Union. The complaint issued February 12, 1982, alleging that American Model & Pattern, Inc., the Respondent, violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, the Act, by discriminatorily laying off its employee, Paul Harrington, because of his activities on behalf of the Union, and violated Section 8(a)(1) of the Act by unlawfully granting pay raises to its employees, coercively interrogating its employees, discriminatorily restricting employees' time in the plant before and after their shifts,<sup>2</sup> and engaging in surveillance of its employees' union activities, all for the purpose of discouraging the union activities of said employees. The Respondent, in its answer, denies the commission of any unfair labor practices.

The case was heard before me on November 1 and 2, 1982, at Detroit, Michigan. All parties were represented at the hearing and were afforded full opportunity to be heard and to present evidence and argument. The General Counsel and the Respondent filed briefs. On the entire record, my observation of the demeanor of the witnesses and after giving due consideration to the briefs, I make the following

### FINDINGS OF FACT<sup>3</sup>

#### The Agency Status of John Payne and Albert Blankenburg

The complaint was amended at the hearing to allege John Payne as a supervisor. Payne, at all times relevant, has been employed by the Respondent as a working foreman on the night shift. As such, Payne directs the other night-shift employees<sup>4</sup> and assigns them duties. Although Payne does the same work as rank-and-file employees, he also spends a certain percentage of his time in supervising them, and is free to take time off as he chooses, to relax, to roam about from job to job talking to employees, or to take time out to read. When work-related problems arise, when repairs or major changes must be made, employees seek out Payne for direction. Payne assigns overtime and Saturday work, independently grants

requests of employees to leave the job early and is usually the only person in authority present during the night shift. On at least one occasion Payne reprimanded an employee for missing too much time and was ultimately responsible for the termination of that employee. I find on the basis of these facts that John Payne is a supervisor within the meaning of Section 2(11) and is, and has been at all times relevant, an agent of the Respondent within the meaning of Section 2(13) of the Act.

Albert Blankenburg,<sup>5</sup> sometimes called the day-shift foreman, sometimes called a working leader, has worked for the Respondent for 14 years. He does much of the same work as rank-and-file employees but in addition helps the others do theirs and shows them how it is to be done. Any employee needing help with his work may ask Albert for assistance, particularly if it has to do with welding, a skill at which he is more proficient than other employees. In addition to aiding employees on request, Albert has, at times relevant herein, directed employees in work procedures and assigned them tasks.<sup>6</sup> Despite the fact that in making the assignments, Albert may be acting, in many cases, merely as a conduit, employees look on him as a member of management because he makes such assignments, because he is the brother of Karl Blankenburg, the owner of the Company, because it is well known that he is on the board of directors of the corporation and because he is part owner of the building which houses the Company. Further, in addition to merely assigning tasks to other employees, there is testimony that Albert tells rank-and-file employees when they should work overtime and when they should work Saturdays. In this connection, Harrington testified that on one or more occasions Richard Giacobbi, the head foreman, came out of his office and told Albert that he wanted some employees to work overtime and then left it to Albert to choose whomever he wished to work. Albert did so. On other occasions, Albert was heard to reprimand employees for poor workmanship and on at least one occasion threatened an employee with a day off because of it. He has also granted permission to employees, on request, to leave work early, sometimes after clearing it with his superiors, sometimes before. Albert's wages are \$12.40 per hour. Payne's are \$10.90 per hour. Rank-and-file employees' wages are less than either. These facts, when considered together with incidents described below, convince me that Albert is, and has been at all times relevant, acting as an agent of the Respondent. *Mars Sales & Equipment Co.*,<sup>7</sup> 242 NLRB 1097 (1979), 626 F.2d 567 (7th Cir. 1980).

#### The Unfair Labor Practices

In 1978 there was an organizational effort at the Respondent's plant. Paul Harrington, an employee of 9

<sup>1</sup> All dates are in 1981 unless otherwise noted.

<sup>2</sup> Related allegations were withdrawn at the hearing.

<sup>3</sup> The complaint alleges and the answer admits that the Board has jurisdiction herein and the Union is a labor organization within the meaning of the Act.

<sup>4</sup> There have been, during relevant periods, four or five rank-and-file employees working the night shift.

<sup>5</sup> Herein called Albert, in order to differentiate him from the owner of the Company, Karl Blankenburg, herein called Karl.

<sup>6</sup> Albert denied that he assigned tasks. However, I credit the testimony of Harrington and Thomas to the contrary. Richard Giacobbi, another member of management, testified that he tells Albert what jobs are to be worked on and who is to do the assigned work, and Albert merely passes on the instructions.

<sup>7</sup> In *Mars* it was decided that the son of the president of the company who was also a director was clothed with apparent authority.

years and the discriminatee herein, took an active part during that campaign in talking the employees out of choosing union representation. He told Ed Sobolewski,<sup>8</sup> the plant manager and vice president of the Respondent, that if the Union were unsuccessful in its attempt to organize, employee meetings with management could follow with improved working conditions resulting from such meetings. Sobolewski agreed with the suggestion whereupon Harrington went back to the employees and told them to let him have a chance to try to work things out internally with the Company, and if it did not work, next time he, Harrington, would stick with the employees in their organizing attempt. The employees agreed and the organizational attempt failed.

Thereafter, two meetings were held at which Harrington acted as spokesman for the employees in bringing to the attention of management problems concerning working conditions at the shop. However, as it appeared to Sobolewski that only Harrington voiced any opinions at these meetings, they were discontinued for lack of interest. Nevertheless, when any subsequent dissatisfaction with working conditions arose, Harrington would take the problem into the office and advise management about it. Thus, for the next several years, Harrington continued to act as spokesman for the employees, bringing to Sobolewski's attention, at different times, the employees' dissatisfaction with wages and with the lack of cost-of-living increases, the need for additional wage benefits and the various problems which arose from time to time between the employees and Albert Blankenburg.

In early July 1981 a fellow employee asked Harrington what he thought about being represented by a union. Harrington replied that it would depend upon the particular union, that he did not wish to be associated with the Pattern Makers Union.<sup>9</sup> The employees advised Harrington to think about it.

The solicitation of Harrington occurred about the time that the other employees were "hounding" him about their not getting any cost-of-living increases or raises. They wanted to know what had happened to all of the meetings that had been promised in 1978 and the dental and optical plans which the Company had promised to look into. About the second week in July, as a result of pressure from the other employees, Harrington approached his foreman,<sup>10</sup> Richard Giacobbi, and asked him about a cost-of-living increase for himself and the other employees. Giacobbi replied that he would discuss Harrington's request with Sobolewski and get back to Harrington later. When he did so, he told Harrington that the employees would not be getting a cost-of-living increase. Giacobbi added that Karl had said that the only problem in the shop was Harrington and that, if they got rid of him, they would not have any more problems.

<sup>8</sup> Sobolewski is an admitted supervisor under the Act.

<sup>9</sup> The shop contains two departments, the metal shop with which this case is primarily concerned and the pattern or wood shop, whose employees are represented by the Pattern Makers Association of Warren. The metal shop was represented by the Pattern Makers for about 6 months in 1974.

<sup>10</sup> Richard Giacobbi is conceded to be a supervisor within the meaning of the Act.

On July 16 Business Agent Tony Martini had authorization cards and explanatory letters mailed out from the Union's office to employees of the Respondent. Among those sent authorization cards were Harrington and Albert. Employee Larry Thomas testified that he received his card on July 18 or 19. Since July 19 falls on a Sunday, I shall find that he received his card on July 18 and that the other employees likewise received theirs on July 17<sup>11</sup> or 18 since the cards appear to have been mailed all at the same time. Similarly, Harrington's card is dated July 18, and he credibly testified that he signed it on that date.

Shortly after the authorization cards were mailed in mid-July, employee Louis Nagy was in the shop working about 3 or 4 feet from Albert. At one point Giacobbi and Sobolewski came by and Nagy heard Albert tell the other two that there were union activities going on in the shop because he had received a union letter and authorization card. A little later Albert asked Nagy if he had received a letter from the Union. Nagy stated that he had not yet received one. Albert then said that Nagy would probably receive one later that day or the following day.<sup>12</sup> Nagy received a card the following day.

I have found, based on Albert's status with Respondent, described supra, and his activities described here as well as infra, that he is and has been at relevant times an agent of the Respondent. Consequently, I find that his interrogation of Nagy on this occasion was violative of Section 8(a)(1) of the Act.

About 1 week after receiving the authorization cards from the Union, some employees received wage increases ranging according to company records, from 20 cents to 24 cents per hour, effective July 17, the date when some or all of them received their authorization cards from the Union and management was advised by Albert of the initiation of the union organizational campaign. The employees were not advised in advance that they would receive the July increases. On the contrary, as noted above, Harrington had been advised that there would not be any cost-of-living increases. Following receipt of the increases, no explanation was offered to the employees as to why they had received the wage increases.

The General Counsel alleges that the July 17 wage increases were granted to discourage the Respondent's employees from supporting or engaging in activities on behalf of the Union. Indeed, the timing of the unannounced wage increase occurring as it did, immediately upon the Respondent's learning of the Union's organizational campaign, would tend to support this allegation.

The Respondent, on the other hand, through the testimony of Sobolewski, contends that the July 17 increase was one of several which are periodically given and in this case was occasioned by a review of economic conditions which called for a raise. The decision to grant the

<sup>11</sup> Employee Frederick Ozga signed his authorization card on July 17.

<sup>12</sup> I credit Nagy's testimony with regard to this incident and find it to have occurred as he described. Consequently, Albert's testimony, where it is inconsistent with that of Nagy, is not credited. I find that management first learned of the Union's organizational drive on or about July 17 or 18.

raise, Sobolewski testified, was made by himself and the owner of the Company on or about July 15, and the size of the raise was dictated by the worth and experience of each individual employee and his daily output. The Respondent offered no documentation to support his testimony that the wage increase in question was based on an economic review,<sup>13</sup> nor were production figures offered to show any equation between an employee's production and the amount of his wage increase. The Respondent and the General Counsel did, however, offer into evidence records reflecting the dates and amounts of previous wage increases, records which upon analysis are of evidentiary value.

Sobolewski testified, at one point, that the fact that many of the raises had been previously given during the third, sixth, and ninth months should not be considered as reflecting a pattern. Elsewhere, however, he testified that the woodshop employees are given cost-of-living increases three or four times a year, and that the industry has set a pattern of granting cost-of-living wage increases in March, June, September, and December. The implication is that the Respondent applies the industry pattern to its wood shop employees. Sobolewski went on to state that within a week or two of the time the wood shop employees receive their cost-of-living increases, the metal shop employees also receive increases provided increases are economically feasible. Sobolewski insisted that these increases are not, however, cost-of-living increases but are merit increases. Employee Ozga testified to the contrary, that cost-of-living increases are usually received every quarter.

Analysis of the company records<sup>14</sup> indicates that over the past several years employees have received both individual and across-the-board raises. There is little doubt that the individual raises were in fact, merit increases as Sobolewski testified. However, of the last 10 across-the-board wage increases granted prior to July 17, 9 of them,<sup>15</sup> dating back to March 26, 1979, show that each employee received exactly the same wage increase.<sup>16</sup> For that reason I find it more likely that these wage increases were cost-of-living increases rather than merit increases. Moreover, each of these wage increases was granted during the 3d, 6th, 9th, and 12th months of within a few days thereof. Thus, the employees received the following wage increases on the dates indicated:

1979	
March 26	\$.13
June 11	.24
Aug. 27	.25
Dec. 10	.21
1980	
March 17 <sup>17</sup>	
Varied and unusually high wage increases were granted.	
June 16	\$.13
Sept. 1	.13
Dec. 1	.11
1981	
March 26	.08
June 22	.20

Thus, it would appear that an analysis of the records of the Company would indicate that metal shop employees received quarterly wage increases based on cost-of-living considerations rather than periodical increases based on merit, experience, and output. This, then, having been established, the question arises: How does the July 17 wage increase fit into the pattern? The answer is that it does not! The July 17 raise was granted after the June 22, 6-month quarterly cost-of-living increase was given and long before the 9-month quarterly cost-of-living increase was due the following September. There being no credible explanation offered by the Respondent, I find that the July 17 wage increases, all differing in minor amounts, were all granted solely as a reaction to the employees' union activities and were therefore motivated by unlawful considerations in violation of Section 8(a)(1) of the Act. *Leisure Time Tours*, 258 NLRB 986 (1981), affd. 111 LRRM 2280 (3d Cir. 1982).

Following the receipt of the authorization cards by the Respondent's employees on or about July 17 and 18, Albert interrogated Harrington and other employees<sup>18</sup> as to whether or not they had received communications from the Union and whether or not they intended to send their (signed) cards back. Having found that Albert was acting as agent for the Respondent during this period, his interrogation of rank-and-file employees concerning this matter was attributable to the Respondent and was clearly violative of Section 8(a)(1).<sup>19</sup>

The day after Harrington received his authorization card from the Union, Richard Giacobbi came up to him first thing in the morning and asked him if he had seen Al's card and the letter he had gotten from the Union. When Harrington replied that he had not seen these items, Giacobbi informed him that Albert had given his copy of the letter to Karl and that it was then lying on the conference room table. Half an hour later Harrington went into the conference room and saw the letter on the

<sup>13</sup> Karl testified that the Company's fiscal year ended in December and that 6 months after December 1981 the Company called in an outside accounting firm to give the Company a complete financial report. Based on a review of this report which indicated that the company was doing better than anticipated, he testified that he directed Sobolewski to give the employees a raise in the middle of July. Neither the report of the accounting firm nor the company's review thereof, if indeed either ever existed, was offered into evidence.

<sup>14</sup> G.C. Exhs. 6a-6e covering employees Albert Blankenburg, Duane Devereaux, Paul Harrington, Arvin Scheffler, and Frederick Ozga.

<sup>15</sup> The single exception occurred on March 17, 1980, when inordinately high wage increases were granted to four of the five employees whose records were offered as evidence.

<sup>16</sup> Individual increases numbered but two since March 26, 1979. Thus, Scheffler received a 25-cent-wage-increase on September 8, 1980, and Harrington received a 15-cent-wage increase on October 22, 1979. Prior to March 26, 1979, the across-the-board wage increases differed and merit probably was, indeed, a factor.

<sup>17</sup> The exceptional wage raised note, *supra*.

<sup>18</sup> Albert admitted several incidents of interrogation on his part during this period.

<sup>19</sup> *Mars Sales*, *supra*, *Scotts IGA Foodliner*, 223 NLRB 394 (1976), affd. 549 F.2d 805 (7th Cir. 1977).

table. A day or two later Albert informed Harrington that he would be receiving a cost-of-living increase. I find the incidents to be additional evidence of Albert's alliance with management and of his agency status as well as evidence that the granting of the wage increases was motivated by unlawful considerations rather than economic reasons.

On July 20 an anonymous letter was sent to the Union signed, "Your friends at American Model and Pattern" requesting that "a list of legal rules on forming a union" be sent to all employees and to the management in order "to nullify and suppress any future company scare tactics." On July 21, another letter was sent to the Union, similarly signed, referring to "what we believe is a bribe" and noting that an 8-percent raise was to be received by all employees on payday, Thursday, July 23, 1981. The writer complained that the raise might upset a future vote and urged the Union "to check it out." On July 30, Tony Martini, UAW organizer for Region 1, mailed to the Respondent's employees additional authorization cards along with the information requested in the anonymous letter of July 20. Despite these additional mailings, after the July wage increases were received, and perhaps because of them, union activity died down among the Respondent's employees.

In September the Respondent failed to grant the usual quarterly cost-of-living wage increase to its employees. Harrington, once again acting as spokesman, questioned Richard Giacobbi early in October about the overdue raise. Giacobbi promised to talk to Sobolewski about it. Half an hour later Giacobbi returned and advised Harrington that the employees would not get the cost-of-living increase. He added that Sobolewski would talk to Harrington later about it but he never did.

Having been advised by Giacobbi that no cost-of-living increase would be forthcoming, Harrington contacted Martini and asked him what had happened with the campaign. Martini replied that he had not received enough signed authorization cards but would send out additional ones with another letter.

On October 7 Martini sent out additional letters to the Respondent's employees urging them to sign authorization cards and to select the Union as their bargaining agent. One such letter was received by Albert although, according to Martini, he did not authorize its sending. Harrington, who also received a second authorization card and letter, discussed their receipt with five or six other employees and urged them to sign their cards and send them back to the Union. One of the individuals with whom Harrington spoke at this time was John Payne. He asked Payne whether he intended to sign and return the card. Payne replied that he did not intend to do so, that he was part of management and should be loyal to Karl. Since I have already determined that Payne is and was a supervisor at this time, it is clear that the Respondent through this discussion gained some insight into Harrington's participation in the Union's organizing campaign.

In early November Harrington had another one of several telephone conversations with Martini during which the two exchanged information concerning the progress of the organizational campaign. They agreed to

schedule a meeting for the coming weekend and Martini requested Harrington to notify the workers in the shop because of the shortness of notice. Subsequently, Harrington advised the other employees about the union meeting, at the same time obtaining information concerning their opinions of the Union. Among those with whom Harrington talked was Payne. He asked Payne if he intended to attend the forthcoming meeting. Payne replied that he would not attend because the employees would feel uneasy if he were there, that he was part of management and was going "to stick with Karl." When Harrington asked Payne how he felt about the Union, Payne replied that he was against it. The extent of Harrington's involvement was further made known to management through this conversation between Harrington and Payne.

On November 7 the union meeting took place and was attended by a majority of the employees. Albert did not attend. The organizational drive was discussed and Harrington was chosen as the Union's observer at the representation election which had been or was in the process of being scheduled.

On November 8 and 9, the Respondent held two meetings with its employees, the earlier one for its night-shift employees, the one on November 9 for the day-shift employees. During the meeting with the day shift, Karl and Sobolewski addressed the employees.<sup>20</sup> Sobolewski read a letter<sup>21</sup> aloud to the employees. The letter which he read was from Martini who claimed to have received signed authorization cards from a majority of the Respondent's employees and intended to go to an election.

After Sobolewski read the letter, Karl made a speech. He said that he could not understand why the employees felt that they needed representation by a third party, by a union. He added that he was surprised that the employees wanted the UAW to represent them. He then asked those present why they wanted a union. At first no one answered. Karl then asked the employees if they were really serious about wanting a union. He directed them to speak up and state if they were for it. He added that if they were really serious and if a majority wanted a union, they could have it right then, that they would not even have to have an election and waste time and money on attorneys' fees. Albert and Gary Vican, Karl's son-in-law, spoke up. Albert said that he did not want the Union and had not sent his card in.<sup>22</sup> Vican added that he did not want the Union either. Harrington, however, spoke up in favor of the Union stating that it was obvious that "a lot of the guys felt that they needed a Union to represent them . . . because of the way they were treated . . . that the company gave the employees cost-of-living increases when it wanted to with no set policy." He added that the workers were very unhappy.

<sup>20</sup> Giacobbi was also present.

<sup>21</sup> Harrington testified that Sobolewski read a second letter which was from the National Labor Relations Board and which specified that the date of the election would be December 10. Since the date of the election was not agreed upon and approved until November 23, Harrington was in error. If, in fact, a letter from the NLRB was read, it probably concerned the filing of the petition.

<sup>22</sup> Albert denied making these statements. However, I credit Harrington's testimony in this regard.

Harrington complained that changes had been promised but that the promised changes had never come about<sup>23</sup> and that that was the reason the employees felt that they had to have representation. As usual, Harrington acted as spokesman and was the only one present to speak up. He commented about not receiving the cost-of-living increase. Karl replied that the employees had to be pretty dumb not to realize why they had not received a cost-of-living increase when he was creating jobs for the employees. He stated that he was upset about the employees getting a union but added that he would not fight it inasmuch as he could see they had already made up their minds. Despite this statement, the Respondent did not recognize the Union because, as Karl testified, the employees did not speak up at this meeting to confirm that they were all for the Union, so he decided to go through the regular election process. The purpose of the meeting, according to Karl, was to determine whether or not an election was necessary.

It is quite apparent that the meeting of November 9 had two effects. Clearly, Karl's interrogation of his employees concerning their union preferences was violative of the Act, and I so find. Secondly, Harrington's firm stand gave the Respondent every reason to know, if it had not been evident already, that he was the driving force behind the organizational drive among the employees.

Following the November 9 meeting Albert, on a daily basis, would ask the employees which of them had or had not sent their signed authorization cards back to the Union. I find this continuous interrogation of the Respondent's employees by its agent, Albert Blankenburg, violative of Section 8(a)(1) of the Act.

One afternoon in November Harrington stayed after work to clean up his toolbox. Quitting time was 3:30 p.m. and, about 4 p.m. Sobolewski came up to Harrington and told him to leave.<sup>24</sup> He added that the Company did not want him around the shop and he should be off the premises within 5 minutes after the buzzer went off. Harrington replied that he had never heard of anything like that. Sobolewski said that he did not want to argue about it, that he had to get off the premises. Harrington locked up his toolbox and left.

According to Harrington he had, on a number of occasions prior to this incident, stayed late after his shift was over. Sometimes he stayed just long enough to clean up his tool box while on other occasions he remained until 10 or 11 p.m. Prior to this incident in November, no one had ever told Harrington that he was not supposed to hang around the shop, nor had he ever heard of such a rule or policy which precluded employees from staying late after their shift was over. Employee Ozga testified that prior to the November incident involving Sobolewski and Harrington, which he heard about indirectly, no rule existed which precluded employees from coming to work early or from staying in the shop after

their shift was over. Employee Thomas, in his testimony, supported that of Harrington and Ozga in this regard.

Giacobbi testified that there is a rule at the shop that employees are not to be in the plant more than 15 minutes before their shift starts, nor more than 15 minutes after it ends. Giacobbi stated that this rule had always been in effect and that the policy was in writing. No such written policy was, however, offered into evidence. Giacobbi also testified that employee Snyder had been warned about breaking this rule. Snyder, however, was not called to testify to corroborate Giacobbi's testimony. According to Giacobbi the policy was discussed between Giacobbi and Sobolewski about a year before the hearing, which would have placed it in November during the height of the campaign.

There is a head-on credibility problem here between the testimony of Giacobbi who testified that the rule in question had always been in effect and the testimony of Harrington, Ozga, and Thomas who testified that it was newly instituted in November during the organizing campaign. I credit the employees on this point and find, based on the timing of the institution of the rule and the content of a similar occurrence the following January, discussed *infra*, that the rule was newly instituted, had never been in writing or enforced before, and that the purpose of the rule was to keep Harrington from discussing the Union with fellow employees and was therefore discriminatorily motivated.

On November 25, Martini sent out a letter to the Respondent's employees advising them that there would be a meeting at the union office on Saturday, December 5, at 1 p.m. Between November 25 and December 5, Albert asked several employees, including Larry Thomas, whether they intended to attend the meeting. Inasmuch as I have found that during this period Albert was acting as agent for the Respondent, his questioning of Thomas and other employees concerning their planned attendance at the meeting was in violation of Section 8(a)(1).

On December 5 the meeting was held. Harrington was one of the first employees to arrive. Martini asked Harrington to introduce the other employees as they arrived. He began to do so when at that point Albert arrived. Martini asked Albert what he was doing there. Albert replied that he had received a letter inviting him. Martini argued that this was not so. Albert offered to go home and get the letter, which he did. When he returned half an hour later and showed Martini the letter in the envelope addressed to him, Martini threw it on the table and denied that he had ever sent it. Harrington picked up the envelope and it was then passed around from hand to hand among the employees present. By the time the employees were through handling the envelope, Albert's name had been completely erased by the handling. Martini accused Albert of getting the letter from someone else and asked him to leave. Albert complied.

The question, then, is whether under the circumstances the Respondent can, through Albert's action, be held to have violated Section 8(a)(1) on the basis of his surveillance of union activities at the December 5 union meeting. In my estimation, contrary to the professed suspicion of the General Counsel, there is insufficient reason to

<sup>23</sup> Specifically Harrington mentioned that the employees wanted a dental plan and an optical plan, matters discussed several times over the previous years and under review at the time, according to Sobolewski.

<sup>24</sup> Giacobbi was present at the time.

conclude that Albert did anything fraudulent with regard to his receipt of the invitation<sup>25</sup> to the December 5 union meeting. On the contrary, I find that Albert received a legitimate invitation to the December 5 meeting, albeit probably mistakenly sent, and decided to accept it and attend the meeting for whatever reason he had in mind. Granted, as the General Counsel suggests, he might well have turned over any information he would have obtained to Respondent, but there is no hard evidence to indicate that this was the plan. All the record shows is that Albert was invited to attend the union meeting by the Union itself, and this is no violation. *Preiser Scientific, Inc.*, 158 NLRB 1375 (1966). When Martini decided that Albert should not attend, he simply left. I find no merit in the surveillance allegation.

Sometime after the December 5 meeting Albert discussed with employees Gary Vican and Arvin Scheffler the meeting of that date. He talked to them in order to find out what had occurred at the meeting although, according to Albert, Scheffler volunteered the information without his having asked for it. To the extent that Albert admitted interrogation concerning what had occurred at the December 5 meeting, I find the Respondent in violation of Section 8(a)(1) of the Act.

On December 8 and 9, the Respondent held meetings with its employees, on December 8 with the night shift, on December 9 with the day shift. Harrington attended the day-shift meeting on December 9. At this meeting Karl addressed the employees and then passed around a number of quotations to be read by those present showing how the Company would not be able to compete if the Union got in. He added that if the Union got in he would be obligated to negotiate with them. He also said that his lawyer, David Gunsberg, would be in later to talk to the employees, and about half an hour later Gunsberg arrived. When Gunsberg talked to the employees he said that he would do his best to keep the Union out but if he did not succeed, then he would represent the Respondent in negotiations. He reiterated that if the Respondent had to pay union scale it would not be competitive. He noted how certain automobile companies and other corporations that had competitive problems farmed out jobs to foreign countries where jobs could be done cheaper than in the United States. He did not, however, state that the Respondent planned to take such action. The meeting then broke up.

About half an hour after the Company's meeting with the employees, Harrington went back into the conference room in order to get a cup of coffee. Karl, Sobolewski, and Gunsberg were still present. Harrington heard Gunsberg ask the others who he was. Gunsberg then asked Harrington what the problem was "back there" and stated that he felt that Harrington was the

one who was doing most of the talking for the other employees. He then told Harrington that he "wanted to know why the guys wanted a union," and what the problems were. Harrington replied that "the guys didn't like the way they were treated, that they were treated like dogs." He complained that the employees received cost-of-living increases only when management wanted to give them, and the men did not like this at all. Harrington stated that the men "had tried it one time without a union, and it didn't work." When Gunsberg asked why, Harrington replied that all of the Company's promises had fallen through, that "the company never kept its word on a lot of the promises." Harrington ended up by stating that he had stuck with the company on a number of occasions before but this time he had "to stick with the guys back there" because he had given them his word. He stated that he would be the union observer at the election the following day. This interrogation of Harrington by Gunsberg appears as credibly testified to by Harrington. Gunsberg did not testify at all. Neither Sobolewski nor Karl<sup>26</sup> denied Harrington's description of what was said. I find Gunsberg's interrogation of Harrington on this occasion violative of Section 8(a)(1).

On December 10, before the election, Albert questioned several employees as to how they thought the election would come out. When Harrington replied that he did not know, Albert commented that he hoped that the employees would not make a mistake.

The election took place as scheduled on December 10 with Harrington acting as the Union's observer. The tally indicated nine votes for the Union, seven against, with four challenged ballots. Thus, the question of representation remained unanswered as of that date.

Following the election employee Harrington joined two other employees at Gilbert's Bar where subsequently they were joined by Albert. The four discussed the outcome of the election. During the discussion Albert stated that he knew that Harrington represented the employees. He added that Harrington should not worry about his job because Harrington was the best man that he had and he was not going to let anything happen to him. Albert gave these assurances several times during the course of their stay at Gilbert's Bar. After some additional discussion about the outcome of the election and how certain individuals may have voted, they all left and went to a second bar where the discussion continued. Albert again assured Harrington that he was his best man and that he would not let anything happen to him.<sup>27</sup>

On the morning of December 11, about 7 a.m., Harrington went into the conference room for a cup of coffee. Present when he entered were Karl, Albert, and Sobolewski, all conversing. About 8:30 a.m. Harrington noticed Albert leave the building. Shortly thereafter, Karl called the rest of the metal shop employees into the

<sup>25</sup> Martini testified that the envelope which contained Albert's invitation was different from the envelopes addressed to the other employees. I find, however, that whereas R. Exh. 3a (Albert's envelope) differs from R. Exh. 2a (an earlier envelope addressed to Albert) as Martini suggests, R. Exh. 3a appears identical to R. Exh. 4 (an envelope addressed to employee Vican). Martini's evidence appears inconclusive. Moreover, why would Albert bother to create such a fiction when the Union could and did turn him away whether or not he had been sent such an invitation. I conclude that Albert was sent the same invitation received by the other employees and chose to accept it just as did the others.

<sup>26</sup> Sobolewski stated that when Harrington came back into the conference room he volunteered that he really had nothing to do with the Union and had neither caused the election to take place nor distributed the authorization cards. Harrington did not deny making these statements. Neither Sobolewski nor Karl could recall anything Gunsberg said during his conversation with Harrington.

<sup>27</sup> The description of this incident is based on Harrington's credited uncontradicted testimony. Albert did not testify concerning this event.



conference room and stated that there was going to be a layoff, pointedly adding that the layoff would not necessarily be by seniority. Karl said that the employees would be told by the end of the day which of them would be laid off, after the decision had been made by management.<sup>28</sup> The meeting lasted about 10 minutes after which the employees went back to work.

Later that morning, Karl, Sobolewski, and Giacobbi met to decide who was to be laid off.<sup>29</sup> Only Karl testified as to this meeting. According to him, the first thing they did was to pull the employees' attendance records which are kept on a weekly basis and which include information concerning whether an absence was excused or not. The records also include the number of times an employee is late. Karl testified that these records were "the number one criterion" for deciding which of the employees should be laid off and that the second consideration was the work qualification of each employee as determined by Sobolewski and Giacobbi. Although the attendance records of the employees generally were "not that great," Harrington's, according to Karl, was the poorest. He was also, Karl testified, the least qualified employee of those in his work classification, although all of them including Harrington were considered good. Karl specifically denied that seniority played any part in the company's decision as to which of its employees should be laid off because the company does not use seniority.

Employed in the metal shop as of December 11 were about 16 individuals, all listed on a personnel type document<sup>30</sup> entitled, "Wage History." The 16 employees were listed on this document in accordance with their dates of hire, i.e., in accordance with seniority. Going down this list of employees, it is clear that the Respondent decided to keep six of its seven oldest employees, Harrington being the exception. Of the remaining nine employees the Respondent chose to keep Scheffler, ninth in seniority, rather than Schneider, eighth in seniority. These two employees had been hired within 9 days of each other, practically at the same time, in January 1977. Scheffler, however, had been hired at 25 cents per hour more than Schneider and for that reason I assume was initially considered a potentially more valuable employee. Of the seven remaining employees all were laid off, all younger in seniority, except Champagne the only full-time truckdriver.<sup>31</sup> In short, I find that despite Karl's testimony, seniority was generally followed during the December 11 layoff, Harrington being an exception.

With regard to Karl's testimony that attendance was the "number one criterion" for deciding which of his employees to keep and which to lay off, the record is barren of proof to support Karl's bald assertion. Karl

stated that he, Sobolewski<sup>32</sup> and Giacobbi first analyzed the weekly attendance records to decide who should be laid off. Inasmuch as these weekly records were not offered to support his testimony, I draw the adverse inference that either they do not exist or, if they do, they do not support Karl's testimony.

Harrington credibly testified that he has never received any type of written reprimand and that his attendance was never the subject of discussion between himself and management except for a single instance which occurred several years before the hearing. On that occasion Harrington was out sick 1 day, then reported in the next day. Upon his return Giacobbi asked Harrington about his 1-day absence and when Harrington replied that he had been sick, Giacobbi commented, "Well, you really don't have nothing to worry about because Al sets an attendance policy for everybody else, and they'll never be able to get rid of you because of his attendance."<sup>33</sup> Harrington testified that Albert did, in fact, have attendance problems. Sobolewski testified concerning attendance records of various employees but again, no corroborating records were placed in evidence. Sobolewski testified that Albert had been given several written reprimands over the years for poor attendance but had never been suspended nor docked for it; that Payne had been disciplined because of attendance problems; that Devereaux had been talked to and possibly Laba, Jones, and Scheffler had been talked to about attendance. As for Harrington, Sobolewski testified that he received one verbal warning from Giacobbi and one from himself. In my opinion, just from Sobolewski's testimony alone it would appear that Harrington's attendance record<sup>34</sup> was no worse than that of the other employees. I find that it had nothing to do with his layoff.

With regard to Karl's claim that Harrington was the least qualified of the employees in his classification, I note that the Respondent's own records indicate that as of the date of the layoff, Harrington was the sixth highest paid employee. I assume that there is some relationship between the wages earned by Respondent's employees and their value to Respondent, as employees. Along this line I note that Harrington was paid \$9.40 per hour and was laid off while employees with less seniority: Devereaux, \$9.50 per hour; Macha, \$7.93 per hour; and Scheffler, \$8.34 per hour were retained.<sup>35</sup> I note further that Devereaux's job classification—machinist and mold finisher—and Scheffler's job classification—machinist upgrader and duplicator—are closely related to Harrington's while Macha's mold maker upgrader, is identical. A comparison of wages indicates that Harrington's hourly wage was substantially greater than Macha's or Scheffler's and just 10 cents per hour less than Devereaux's. A comparison of recent wage increases, i.e., in

<sup>28</sup> The parties stipulated that the layoff, as such, was economically motivated. The General Counsel alleges, however, that the choice of Harrington was discriminatorily motivated.

<sup>29</sup> Albert reportedly played no part in the decision.

<sup>30</sup> R. Exh. 6.

<sup>31</sup> Bewley, the other truckdriver, had more seniority than Champagne but was working only part time at the time. During an earlier layoff when Champagne was working part time and Bewley was working full time, Champagne was laid off and Bewley retained.

<sup>32</sup> Sobolewski supported Karl's testimony on this point to the extent of stating that part of the reason for Harrington's layoff was the fact that he had a much poorer attendance record than either Devereaux or Macha.

<sup>33</sup> Giacobbi did not testify with regard to this matter.

<sup>34</sup> Sobolewski admitted that a number of employees received written warnings but could not recall if Harrington did or not.

<sup>35</sup> Champagne will not be considered inasmuch as his job classification, truckdriver and janitor, is far removed from that of Harrington and others with more closely related classifications.



1981, indicates that in the last few years these employees received the following increases:

	1979	1980	1981	Total
Harrington	\$.98	\$1.06	\$.51	\$2.55
Macha	.83	.92	.48	2.23
Scheffler	.83	1.18	.48	2.49
Devereaux	.83	1.08	.49	2.40

Thus, the wage structure reflects not only that Harrington was receiving a greater hourly income than Macha and Scheffler and just under that received by Devereaux but that over the most recent 3 years had received wage increases greater than the other three, reflecting greater satisfaction with Harrington's most recent work than with the other three.<sup>36</sup> All of this is reflected by the Respondent's own records.

In addition to the records, there was a great deal of testimony in which the quality of Harrington's work was compared to that of the other employees. Harrington, himself, testified that, although there had been a half dozen layoffs prior to the one on December 11, he had never before been laid off.<sup>37</sup> Rather, younger employees had been let go in the past instead. However, in December 1981, three employees with less seniority than Harrington were retained. These three—Devereaux, Macha, and Scheffler—all did pretty much the same type of work that Harrington did.<sup>38</sup> Harrington testified credibly that the work of the three employees retained was not as good as his own. He did his work faster and better and could read a print better than the others. Devereaux, according to Harrington, could barely read a print and would frequently come to Harrington to ask him "how a particular part should be" and how it should be made. Similarly, Harrington testified that Macha and Scheffler would also come to him for advice. Scheffler sometimes had problems reading prints or with how to do a particular job. On these occasions he sought Harrington's help. Harrington testified that management frequently would come to him specifically to ask that he work on particular jobs since he was the only one qualified to do certain kinds of machining and spotting jobs.

In comparing his own work to that of Macha, Harrington testified that Macha does very little, "as little as possible." Macha, according to Harrington, mainly benches and once in awhile will help somebody spot.

Besides Harrington, other rank-and-file employees were called to testify as to the comparative quality of Harrington's work. Thus, Larry Thomas, a trainee and an employee since December 1980, testified that he had

worked with Harrington, Devereaux, Scheffler, and Macha and that he would regularly go to Harrington for help if he had any problems with his work. He added that other employees would do so as well. On these occasions he would ask Harrington, for example, how to machine a specific mold. Thomas stated that he would seek out Harrington on these occasions because he had been there at the shop for a long time, knew his job, did very good work, was easy to get along with, and did not get angry when he asked questions of him. Thomas testified further that he did not feel free to ask just any other employee about work problems because some people do not like to be asked questions and get irritated when asked. He added that he felt that Harrington's work was comparable to that of Devereaux and Scheffler and that he could also ask Devereaux and Scheffler questions although in some things Harrington was superior to the other two while in other things Devereaux or Scheffler might have been superior. They were pretty much on a par, according to Thomas. Macha, on the other hand, did not come close to the other three in work performance, Thomas testified. There were employees working in the shop for less time than Macha who still did better work than he did. Macha, Thomas testified, did less work than Harrington, Devereaux, and Scheffler and what he did was of poorer quality. Thomas testified that except for the truckdrivers and Roman Laba, the metal finisher, all other employees did the same kind of work although some were better qualified than others.

Louis Nagy, an employee of the Respondent since February 1977, testified that he has worked with Harrington and is familiar with his work and with the work of the other employees. He stated that Harrington, Devereaux, and Scheffler all do good work and that Harrington's is not of lesser quality than that of the other two. He testified that he observed Macha, many times, asking Harrington questions about the job, about what to do, and how to do it. Conversely, he testified that he had never seen Harrington go to Macha for help. Nagy stated that Macha does as little as possible, that Macha would "rather not get his hands dirty at all."

Employee Frederick Ozga, an employee of the Respondent since August 1977, worked on the first shift before his layoff but returned to the night shift upon recall. Ozga testified that he has worked with Harrington, Devereaux, Scheffler, and Macha and that all do good quality work. He added, however, that Harrington is superior to the others both as to quality and speed. Macha, Ozga stated, does mostly unskilled work and is a different class of worker than the other three. In Ozga's words, he does a "different caliber of work," packaging, shipping, and receiving and once in awhile some light bench work.

The Respondent called as its witnesses to testify as to Harrington's qualifications Edward Sobolewski and Karl. I found Sobolewski's testimony difficult to understand logically and therefore difficult to credit both as to matters particularly relevant to the quality of Harrington's work as well as to his testimony in general. Thus, Sobolewski testified that mold finishers do not make as much money as moldmakers. The Respondent's own records

<sup>36</sup> Sobolewski testified that the number and amount of the raises reflect the Employer's opinion of the particular employee.

<sup>37</sup> On one occasion he and several other employees had had their hours cut. Sobolewski corroborated Harrington's testimony that he had never been laid off before and added that some other employees had been laid off before December 11, while others had not. He also agreed that once there had been a short workweek assigned to some employees in lieu of a layoff.

<sup>38</sup> About 2 years before the hearing the Company bought a machine called a tracer or duplicator and began teaching Scheffler how to operate it. The machine, however, had only been used 8 hours in 2 years and remains covered up, unused.

indicate, however, that other than the two leaders, Albert Blankenburg and John Payne, the highest paid individual is Roman Laba, classified therein as a mold finisher. Not only was Laba making more money in 1981 at the time of the layoff, but was hired at the starting wage of \$5 per hour in 1971. No other employee was hired at that high a wage before or since until 1980, 9 years later, when wage rates were generally considerably higher and by which time Laba was earning \$10.34 per hour. Similarly, Sobolewski stated that pretty much all of the molds built by the Respondent require different degrees of mold finishing, and that, "There would be no reason for a mold maker to do it [finishing] because a mold maker's too valuable." In the face of this statement the question comes to mind as to why the Respondent would keep Devereaux, a mold finisher, while laying off Harrington, a moldmaker. Also compare the starting hourly wages of mold finishers Devereaux \$3.50 in 1974 and Schneider \$3.75 in 1977 with moldmakers Harrington \$3 in 1973 and Macha \$3.25 in 1976. Finally, Sobolewski testified that one mold finisher was kept during the December layoff because there would not have been any reason to keep a moldmaker to do the finishing work. Despite Sobolewski's explanation here, the record indicates that two finishers were kept, not one, Laba who was being paid \$10.42 per hour and Devereaux who was being paid \$9.50 per hour. Maybe there is an explanation here that escapes me but all I have to work with is the record before me and it clearly indicates that two higher priced relatively unskilled finishers (according to Sobolewski's testimony) were kept while the higher skilled moldmaker, Harrington, was laid off though he was receiving at the time only \$9.40 per hour.

Sobolewski testified concerning the qualifications of Harrington, Devereaux, Scheffler, and Macha. Apparently comparing Harrington to Devereaux, Sobolewski noted only that a moldmaker can become a finisher but would first have to learn some finishing. He went on to state that generally, however, the moldmaker gives the mold to a bench hand to finish but is capable of finishing the mold himself. He added that Harrington has probably done mold finishing. What this testimony appears to boil down to is that moldmakers including Harrington know how to finish molds but usually have less qualified coworkers do this work for them.

With regard to Scheffler, Sobolewski testified that he was retained because of his experience, because he was being trained on the duplicator, and because of his value as a machinist. Scheffler was marked as a machinist in the Respondent's records because he was a machinist to begin with and that is his forte, according to Sobolewski, who added that Scheffler is a better machinist than Harrington and was kept for that reason.

Sobolewski's testimony that Scheffler was retained because of his experience is rejected in light of the fact that Harrington has been with the Respondent more than 3 years longer than Scheffler and in light of the credited testimony that all the employees except Laba do pretty much the same type of work. His testimony that Scheffler was retained because he had been trained on the duplicator is rejected because of the credited testimony that the duplicator has been used only for one job, for

a total of 8 hours over the past several years.<sup>39</sup> Finally, Sobolewski's testimony that Scheffler was retained because of his value as a machinist is likewise rejected because he also stated that a moldmaker has to be a machinist in order to be a moldmaker. Sobolewski explained that part of moldmaking includes machining whereas one may be a machinist and not a moldmaker. Harrington, Sobolewski admitted, has been a machinist. In short, Sobolewski's testimony concerning why Scheffler was retained rather than Harrington, I find unconvincing.

Sobolewski testified that Macha was retained because his work was very good while Harrington's was only average to good, because he had a better attendance record and because his father was and is a customer of the Respondent. I reject Sobolewski's statement that Macha's work was better than Harrington's because all of the rank-and-file employees who took the stand testified otherwise. Moreover, Sobolewski's explanation that Macha's wage was less than Harrington's only because he started at a later date and simply had not had time to catch up by the time of the layoff is laughable. The Respondent's own records indicate that the following comparative wage increases were given:

	<i>Macha</i>	<i>Harrington</i>
1976	\$ .50	\$ .55
1977	.60	.70
1978	1.35	1.10
1979	.83	.98
1980	.92	1.06
1981	.48	.51
	<hr/> \$4.68	<hr/> \$ 4.90

It is patently clear that if Macha and Harrington were to continue working for the Respondent for the rest of their natural lives, at the rate they were going, Macha would never make as much as Harrington. Sobolewski's explanation is rejected.

Sobolewski's testimony that Macha's attendance was better than Harrington's is likewise rejected for reasons already noted, i.e., failure to offer existing records<sup>40</sup> in corroboration of his testimony. Moreover, in a letter of recommendation written September 4, 1980,<sup>41</sup> by Sobolewski on Harrington's behalf, he wrote that Harrington was conscientious and diligent. This is not something one would write about an employee with serious attendance problems.

Finally, in light of Sobolewski's demonstrated lack of credibility, I see no reason to credit his uncorroborated statement that Macha was retained because his father was a customer of the Company. There is no indication that favoritism of this nature played any other part in the

<sup>39</sup> The fact that Scheffler was classified in the Respondent's records as a duplicator calls into question the reliability of those records since Scheffler only used the machine on one occasion over a period of years.

<sup>40</sup> During his testimony Sobolewski specifically stated that such records exist.

<sup>41</sup> Sobolewski testified that Harrington's attendance was better in 1981 than in 1980. Thus, if Harrington was conscientious and diligent in 1980, he was even better in 1981 when he was laid off.

decision concerning layoffs. Indeed, Gary Vican, Karl's son-in-law, and Tony Giacobbi, Richard Giacobbi's son, were given no special treatment and were laid off on December 11 along with other rank-and-file employees.

Karl testified, for the most part, on why Macha was retained rather than Harrington. Specifically, Karl stated that Macha was retained because his classification was different, a statement which according to the Respondent's own records is not true since both Macha and Harrington are classified as moldmaker upgraders. Another reason that Macha was retained, according to Karl, was because he was paid \$2 less per hour than other employees. True he was being paid \$1.47 less per hour than Harrington, but if money were of particular importance to the Respondent and seniority meant nothing as is its claim, there were several other employees in the same classification as Macha making less than he was. For example, keeping in mind that Macha was classified as a moldmaker making \$7.93 per hour, note that Louis Nagy, another moldmaker, could have been kept for \$7.55, a saving of 38 cents per hour; and Ozga, another moldmaker, could have been retained at \$6.95, a saving of 98 cents per hour; and Thomas, another moldmaker, could have been retained at \$6.08, a saving of \$1.85 per hour, etc. In light of the fact that the testimony of most witnesses was conclusive that Macha was far from the best worker employed, one can well understand why the Respondent might argue that he was kept in order to save money, rather than because he was exceptionally skilled. On the other hand, if the purpose in retaining Macha was, in fact, to save money, why did not the Respondent lay off Macha and keep Nagy, Ozga, Thomas, or Vican and save even more money. The reply might be that Macha was considered *by the employer* to be a better moldmaker<sup>42</sup> than the others. If so, how about showing it in wage increases:

	1981
Macha	.48
Nagy	.77
Ozga	.52
Thomas	.68
Vican	.93

Clearly of all the moldmakers, upgraders, or trainees, Macha's work was valued the least during the year 1981. Thus, it would appear that neither quality of work nor saving money was the reason Macha was retained over Harrington. Indeed, the record indicates that Macha's work was poorer in quality than newer employees and he was paid more than they were. Why was he kept? The logical answer is that he had seniority. If that is so, what about Harrington!

Generally, Karl testified that Macha was retained rather than Harrington for three reasons; better quality of work, better attendance, and because Macha is the son

of a customer. No sooner did Karl give quality of work as a reason for keeping Macha, then he withdrew this as a basis for his retention, explaining that he does not witness the day-to-day operations and so cannot compare the work of the various employees. As far as attendance is concerned, Karl offered no evidence to support his mere statement that it was a consideration. Finally, with regard to his statement that favoritism played a part, no particulars were offered to support this contention.

Since the layoff, or shortly before the layoff, the Company has initiated a new shipping and receiving procedure and has bought and put into operation a complete filing tool cabinet system. Macha, as of the time of the hearing, had been given duties connected with shipping and receiving and taking care of the tool crib. Karl conceded that Harrington would have been capable of performing these duties. I suspect that any one of the employees could.

From the totality of all testimony on the subject, both by rank-and-file employees called as witnesses for the General Counsel and by the Respondent's managerial witnesses and from the analysis of the records proffered by the Respondent, I conclude that Harrington was a specially valued employee, the quality of whose work was recognized by everyone familiar with it, and that he was not chosen for layoff because he was one of the least qualified employees as the Respondent contends. I conclude, further, that Harrington's attendance record played no part in the Respondent's decision to lay him off. In short, the reasons proffered by the Respondent for laying off Harrington are not supported by the record and I regard them as pretextual.

Following the meeting of management on the morning of December 11 at which it was decided which of its employees the Respondent would retain and which it would lay off, Karl, at 1 or 2 p.m., called various employees into his office and advised them that they were being laid off. When Harrington was called in, Karl reminded him of the hourly wage at which he had been hired and of the fact that he was then making \$9.40 per hour and so much per year. He then asked Harrington why he wanted a union, stating that he had to know in order to negotiate a contract with the Union. Harrington replied that he wanted the Union because of the way the employees had been treated and the things that had gone on in the shop. Harrington explained that he was unhappy with these things and so were the other employees. He then asked Karl if he was going to be called back. Karl answered, "Maybe in about six months if we call you back at all."<sup>43</sup>

Although there had been a half dozen separate layoffs in prior years, Harrington had never been laid off but had always been one of those retained. Even in 1975 when six employees had been laid off Harrington and Devereaux were retained although cut down to 3 days per week. In this respect, the December 11 layoff was quite unique.

<sup>42</sup> The job classifications of the employees in question read as follows:  
Macha—Moldmaker upgrader.  
Nagy—Moldmaker trainee.  
Ozga—Moldmaker trainee.  
Thomas—Moldmaker trainee.  
Vican—Moldmaker trainee.

<sup>43</sup> The content of this discussion appears as described in Harrington's credited testimony. Neither Karl nor Sobolewski, who was also present, testified on this matter.

On January 14, 1982,<sup>44</sup> Karl called Harrington to tell him to come to the shop and pick up his IRA certificates. During the conversation which ensued Harrington commented that he hoped that Karl did not hold a personal grudge against him because of what had happened. Harrington explained that he had made a promise to the other employees and felt that he had to keep that promise to them. Karl replied that he did not hold a grudge against Harrington but that nobody was going to tell him how to run his business, not Harrington, not the Union, nor the Government. This conversation which is based on the uncontradicted, credited testimony of Harrington clearly indicates a certain displeasure on Karl's part with Harrington's role in the Union's organizing campaign and with the presence of the Union on the scene in general.

On January 15 Harrington went to the shop to pick up the IRA certificates and was told when he arrived that Sobolewski wanted to talk with him. When the two got together in Sobolewski's office, Sobolewski told Harrington that he had a job coming in and needed a man on the night shift. He added that he was going right down the seniority list and if Harrington did not want the job he would call the next employee on the seniority list.<sup>45</sup> As Sobolewski spoke, Harrington could see that he had a list of the Respondent's employees listed according to seniority, Harrington's name being first, Schneider's, the next senior employee on layoff, being second, and so forth. Harrington stated that he would like to talk with his wife before making a decision and Sobolewski told Harrington that he should let him know later that day. Subsequently, after discussing the matter with his wife, Harrington called Sobolewski, accepted the offer and returned to work on nights, on January 17 or 18.<sup>46</sup>

I find the fact that Sobolewski called back the Respondent's laid-off employees by seniority significant and supportive of my earlier finding that seniority was basically used during layoff with Harrington being a notable exception.<sup>47</sup>

On the evening of Harrington's first night back at work, his supervisor, John Payne, and he engaged in a conversation during which Harrington asked Payne why he thought the Respondent had laid him off. According to Harrington, Payne chuckled and said, "You know why . . . because [you] struck out against Karl, and Karl wanted to put you in your place. That's why you were laid off." Payne added that Karl had called Harrington back because he thought Harrington had been punished enough but had decided to put him on nights. Harrington replied, "Well, I'm going to be going back on days

pretty soon, because I had talked to Ed Sobolewski about it." Payne stated, "You can forget about going back on days."

I find this conversation exceptionally instructive. Although Harrington assumed that Payne's statement to him as to why he was laid off and as to what was to happen to him on the job in the future was merely opinion, I find otherwise. Payne was a member of management who was to become Harrington's supervisor once he was recalled. As such, it is more likely than not that higher management told him why Harrington was laid off, why he was placed on the night shift, and why he was going to remain on the night shift. Though for reasons stated *infra*, I would have concluded anyway that Harrington's layoff was discriminatorily motivated, Payne's statement that he was laid off "because he struck out against Karl" is tantamount to an admission of the violation by the Respondent. But not only was Payne's statement an admission of the true reason for the layoff, his further statement that Harrington could "forget about going back on days" is substantial evidence that he had been told why Harrington was recalled to work nights rather than days, and why he would remain on nights.<sup>48</sup> When this conversation is considered in light of the earlier "grudge" conversation between Karl and Harrington and the incidents discussed both *supra*, and *infra*, wherein management attempted to restrict Harrington's contact with other employees, I must conclude that Harrington was placed on the night shift in order to isolate him from the day-shift employees for discriminatory reasons in violation of the Act. As of November 1, 1982, the first day of the hearing in the instant proceeding, almost 10 months later, Harrington was still on the night shift, a further indication that Payne's forecast was more than mere opinion.

The second night back on the job, and the night after his conversation with Payne, Harrington came in 15 or 20 minutes early in order to get a cup of coffee and relax a bit before actually starting work. After getting 30 or 40 feet into the building, Harrington was stopped by Giacobbi who told him that he could not come in, that he had to wait outside until his shift started. Giacobbi added that "They didn't want [him] in the shop organizing the day shift."<sup>49</sup> Harrington offered to wait in his car, but Giacobbi said that it was not necessary this time, but from then on Harrington should not come in earlier than 5 minutes before the shift starts.

I find that the Respondent, through Giacobbi, on this occasion, interfered with its employee's Section 7 rights in violation of Section 8(a)(1) by restricting Harrington's time in the plant prior to his shift. I also find that the statement made by Giacobbi on January 19 as to the reason for the implementation of this restriction clearly reflects the motive behind Sobolewski's similar interference with Harrington's movements in mid-November 1981 and is substantiating evidence that Harrington's

<sup>44</sup> Hereinafter dates are in 1982 unless otherwise indicated.

<sup>45</sup> Sobolewski testified in agreement with Harrington that the Company obtained a big order in January and decided to call back a couple of employees. He testified that he called Harrington first to offer the job opportunity. He explained that Harrington was called back to work nights because there were six employees already on days and only two employees then working nights.

<sup>46</sup> Certain other employees had been called back earlier.

<sup>47</sup> Further evidence that the Respondent ordinarily relied on seniority in making its decisions regarding working conditions is reflected in its practice of approving vacation requests based on "length of service with the company." See G.C. Exh. 3. Harrington's uncontradicted testimony to this effect is credited.

<sup>48</sup> Payne was not called to testify.

<sup>49</sup> The content of this conversation is based on the uncontradicted, credited testimony of Harrington. Giacobbi admitted having a conversation with Harrington concerning his coming to work early but did not testify specifically as to its content.

recall to the night shift rather than to the day shift was discriminatorily motivated.

A couple of weeks after Giacobbi's warning to Harrington, a notice was placed on the bulletin board regarding, among other things, a prohibition against employees reporting too early before or remaining too late after their shifts.<sup>50</sup> I find that the posting of this notice was a belated attempt on the part of the Respondent to add legitimacy to its recently implemented, discriminatorily motivated, unlawful rule. Sobolewski's and Giacobbi's explanations for the implementation of the rule, i.e., to prevent people from interfering with the work of others, is rejected in light of Giacobbi's open statement to Harrington that he did not want him reporting early and organizing the day shift and in further light of his testimony that employees ordinarily talk with each other while they work and the Company has never felt the need to post a notice with regard to such conversation.

In summary, in addition to finding the Respondent in violation of Section 8(a)(1) with regard to the incidents described above for the reasons explained supra, I also find the Respondent in violation of Section 8(a)(3) with regard to the discriminatory layoff of Harrington. In so finding, I rely on the following:

1. Harrington's history since 1978 of being the leader and spokesman for the other rank-and-file employees as well as being friendly to management.

2. Karl's statement in July 1981, as reported by Giacobbi, to the effect that the only problem in the shop was Harrington and that if the Respondent got rid of him, it would not have any more problems. This statement shows displeasure with Harrington's role as leader and spokesman for the other rank-and-file employees.

3. The wage increases granted in July, occurring as they did immediately upon management's learning of the Union's organizational campaign, having been found to have been designed to interfere with the employees' desire to be represented by the Union, which indicates serious objection to such representation.

4. Harrington's overt leadership role in the Union's organizing campaign and the Respondent's knowledge of Harrington's participation in the Union's organizing efforts obtained through his conversations with Payne in October and November.

5. Karl's speech to employees on November 9 wherein he stated that he was upset and could not understand why they wanted a union. These statements and his interrogation of the employees on this occasion indicate union animus.

6. Harrington's prounion statement made at the same meeting which indicated to the Respondent that he was still the spokesman for the employees but no longer friendly to the Respondent's cause.

7. Harrington's prounion positional statement made December 9 during his discussion with Gunsberg which

indicated to the Respondent that he was still loyal to the Union's cause.

8. Harrington's acting as the Union's observer on December 10 which also manifested to the Respondent his prounion sympathies.

9. Albert's repeated assurances following the election that he knew that Harrington was for the employees but that he would not let anything happen to him because he was the best man he had. These assurances clearly indicate that the quality of Harrington's work was highly prized by his superiors and that later criticisms were pre-textual.

10. The fact that though there had been several layoffs in the past, Harrington had never before been chosen for layoff until the December 11 layoff, the day following the union victory.

11. The fact that Karl announced in advance of the layoff that the layoff would not be in accordance with seniority which indicates that he felt that the employees would assume it would be by seniority but that he had already decided not to follow seniority on this occasion. His statement indicates a planned deviation from past practices, otherwise there would have been no necessity or occasion to make the statement.

12. The fact that despite Karl's statement to the contrary, the December 11 layoff was generally in accordance with seniority, Harrington's layoff being the most notable exception. The Respondent's position that it does not follow seniority is proved false by its handling of this layoff and by additional factors noted herein.

13. The fact that the Respondent would use such transparent pretexts as it did in this case indicates that it had no credible explanation for its having failed to follow seniority and its previous procedure in laying off employees. The Respondent failed totally in convincing me that Harrington was laid off on December 11 out of seniority because he was least qualified and because he had poor attendance. I conclude that inasmuch as the Respondent could not offer a reasonable explanation for laying off Harrington, the real reason for doing so, in light of other factors, was at least unreasonable and almost certainly unlawful.

14. The fact that during the layoff interview Karl emphasized in his discussion with Harrington that Harrington had been treated well, that he had advanced from his initial wage rate to a better wage rate over the years, but that he had chosen to go with the Union. These statements plus the interrogation which followed concerning why, under the circumstances, Harrington had chosen the course he had, clearly equates to a lesson in cause and effect, where the bottom line was layoff. Briefly, Karl here advised Harrington that he had had it good, chose to opt for another course and would thereby suffer.

15. The telephone conversation of January 14 wherein Karl told Harrington that he did not hold a grudge against him but that nobody was going to tell him how to run his business, not Harrington, not the Union nor the Government. This is indicative of anti-Harrington and union animus.

<sup>50</sup> Harrington's testimony that the notice was posted in early February is credited. Testimony by Giacobbi that the notice may have been posted earlier was vague and is not credited. Karl's testimony concerning the posting of the notice is mostly irrelevant since it had to do with lunch-breaks. The date ascribed to the posting during said testimony was supplied to him by his attorney. The notice was not dated.

16. The use of a seniority list by Sobolewski in recalling Harrington and other employees to work which convinces me that seniority was a standard ordinarily used by the Respondent in its dealings with employees and was its standard on December 11 despite its treatment of Harrington.

17. Payne's explanation to Harrington that the reason for layoff was that he had struck out against Karl (by supporting the Union) and that Karl wanted to put him in his place. This explanation, which I believe Payne received from Karl directly, reflects my own opinion as to what happened, even without Payne's testimony.

18. The Respondent's attempts in November and the following January to restrict Harrington's contact with other employees in order to interfere with their legitimate Section 7 protected activities indicates a continuing desire to subvert such activities.

19. The Respondent's placing Harrington, upon recall, on the night shift in order to isolate him from the day-shift employees in order to prevent him from engaging in further union activities.

20. The vacation choosing procedure used by the Respondent in 1982 which utilizes seniority as its basis. The position of the Respondent notwithstanding, this implies that seniority has always been in use as an indicium for determining working condition procedures. There is no reason why seniority should be utilized for vacation purposes and for no other reasons.

Based on these considerations, I find that Harrington was discriminatorily laid off the day shift on December 11 and recalled to the night shift on January 15 and that but for his union activity he would have been retained throughout this period and would still be working the day shift. Thus, I find that the Respondent, in this respect, violated Section 8(a)(3) of the Act.

#### THE EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth above, occurring in connection with its operation described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take appropriate and affirmative action designed to effectuate the policies of the Act. In particular, as I have found that employee Paul Harrington was discriminatorily laid off, I shall recommend that the Respondent be required to offer him full and immediate reinstatement to the day shift, with backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).<sup>51</sup>

<sup>51</sup> See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

#### CONCLUSIONS OF LAW

1. American Model & Pattern, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

3. By granting wage increases to employees, interrogating employees, restricting employees' time in the plant prior to and after their shifts, all for the purpose of interfering with the rights of employees to engage in union activities, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By laying off employee Paul Harrington because of his union activities and, upon recall, discriminatorily assigning him to the night shift, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>52</sup>

#### ORDER

The Respondent, American Model & Pattern, Inc., Saint Clair Shores, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from discouraging membership in, activities on behalf of, or sympathies towards the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, or any other labor organization by:

(a) Granting wage increases to employees, interrogating employees, restricting employees' time in the plant prior to and after their shifts where the purpose of such action is to interfere with the rights of employees under Section 7 of the Act.

(b) Laying off employees because of their union activities.

(c) Assigning employees to the night shift because of, and in order to interfere with, their union activities.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Offer employee Paul Harrington immediate and full reinstatement to his former position on the day shift, or if such position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges and make him whole for any losses,

<sup>52</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

including any loss of pay, he may have suffered as a result of his layoff and discriminatory assignment to the night shift, in the manner set forth in "The Remedy" section of this Decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary or useful in complying with the terms of this Order.

(c) Post at its plant in Saint Clair Shores, Michigan, copies of the attached notice marked "Appendix."<sup>53</sup> Copies of this notice on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by

Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>53</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."